Wills: Time of Vesting of Legacies and Devises.—The testator, whose will was involved as one of the elements in the case of Western Pacific Company v. Godfrey,[1] left the defendants what the Romans called a hereditas damnosa,—a block of stock in a bank which, shortly after his death, suspended payment. A heavy stockholders' liability attached to this worthless stock, as against its owner, whoever he might be. Grecian gifts have been proverbial since the Trojan horse, and the law has recognized this fact and has usually allowed people to refuse doubtful benefits, where other people are not hurt by such refusal. It is true that an heir under the English law takes willy-nilly,[2] and the early Roman law went even further and not only forced the inheritance upon the heres, but made him personally liable for the testator's debts.[3] But such cases are exceptional in modern law, and it may be laid down as a general principle, in the English and American law, that, except in the case of the heir, one cannot have property thrust upon him against his will.[4] The language of the Court in the principal case leaves some hope that this is also the law of California, and the decision is plainly sustainable upon the ground on which it is placed, that the legatees of the stock assented to the gift, after the burdens had attached.

But there are difficulties in allowing the legatee the right to renounce, and slightly different facts would give rise, as the Court suggests, to "some interesting and perplexing problems." Suppose, for example, that the legatees had promptly renounced before the liability had attached,—where would the liability rest? Under the common law system, even if the residuary legatee should renounce, there was no practical or theoretical difficulty in the way. The property would remain vested in the executor who continued the personality of the testator, and in whom the legal title was already vested by the grant of letters. But under the California system, which it has

---

[1] (October 18, 1913) 46 Cal. Dec. 382, 136 Pac. 284, affirming judgment in District Court of Appeal, 16 Cal. App. Dec. 418.

[2] Williams, Real Property, (21st ed.) p. 86.

[3] Sohm, Institutes of Roman Law, translated by Ledlie, 2nd ed., p. 526.

[4] "The law certainly is not so absurd as to force a man to take an estate against his will" Abbott, C. J. in Towson v. Tickell, (1819) 3 Barn. & Ald. 31, 35 (5 Eng. C. L. R.); Defreese v. Lake, (1896) 109 Mich. 415, 67 N. W. 505, 63 Am. St. R. 584. Legatees by renouncing in favor of one exempt from succession tax were held to relieve themselves from such burden in Re Stone's Estate, (1906) 132 Iowa 136, 109 N. W. 455, and in Re Wolfe's estate, (1903) 89 App. Div. 349, 85 N. Y. Supp. 949. (The last case suggests that the heir cannot thus escape taxation.) The presumption of acceptance is very strong in the case of the legatee or donee, even if the gift be an "onerous" one. Siggers v. Evans, (1855) 5 El. & B. 367 (85 Eng. C. L. R.) The expression sometimes is that the property is vested subject to the donee's dissent. See Standing v. Bowring, (1886) 31 Ch. D. 282; Mallott v. Wilson, (1903) 2 Ch. 494, and the very striking case of London and County Banking Company v. London and River Plate Bank, (1888) 21 Q. B. D. 535.

been said, is modelled upon that of Texas,[5] the idea of a universal successor, which was common to both Roman and English law, (save as to land in the latter system),[6] has been abandoned. Both devises and legacies are said to vest in the devisees and legatees immediately upon the testator's death, and the executor is said to take no title but merely a possession for the purpose of enforcing the lien of the creditors of the decedent.[7] It may be questioned whether this statement, so often made, is wholly correct. For example, how can a legacy of $10,000 be vested in the legatee in a case where the testator left no money but only bonds and land, which must be sold to produce the legacy? But it is quite clear, that whether the statement is or is not entirely accurate, the California executor does not take title, and, above all, does not represent the testator as if he were still living, as did the heres and his successor, the English executor. Had the legatees in the Godfrey case renounced, therefore, the legacy would not fall to the executor, to be dealt with by him as it would have been by the testator. As we read the opinion in the present case, the Supreme Court, in effect, so holds by declaring that the "estate" was not liable as a stockholder, but that the legatee was. If then the executor be not liable, the dilemma which faces the Courts in this jurisdiction is this: they must either hold that the legatee's share under the will is "irrecusable" like the heir's at common law, or they must cast upon some relative of the decedent,—perhaps one disinherited by the testator,—the burden of paying an obligation which he never assumed.

The case well illustrates the difficulties that may arise where a legal conception, like that of universal succession, which required thousands of years to develop, is suddenly rejected.[8]

O. K. M.

---

[5] See arguments of Joseph P. Hoge and Samuel M. Wilson in Beckett v. Selover, (1857) 7 Cal. 215, 228, and opinion by Burnett, J., at p. 238.

[6] Holmes, Common Law, pp. 342-350.

[7] Beckett v. Selover, (1857) 7 Cal. 215, 238; Est. of Woodworth, (1867) 31 Cal. 595, 604; Est. of Hite, (1911) 159 Cal. 392, 396, 113 Pac. 1072.

[8] As to universal succession see Sohm, Roman Law, supra, pp. 523-528; Holmes, Common Law, pp. 342-350; Holland, Jurisprudence (10th ed.) pp. 154-158.